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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,664	12/28/2001	Mark Muhlestein	112056-0022	4613
24267	7590	02/04/2005	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			NGUYEN, THAN VINH	
			ART UNIT	PAPER NUMBER

2187

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/035,664

Applicant(s)

MUHLESTEIN ET AL.

Examiner

Than Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-11, 13-17, 20 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-5, 12, 18, 19, 21, 22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This is a response to the amendment, filed 11/9/04.
2. Claims 1-25 are pending. New claims 24,25 are added.

#### ***Response to Amendment***

3. Applicant has amended claim 6,13,20,23 into independent form to include allowable subject matter indicated in the previous office action. Thus, claims 6,13,20,23 and dependent claims 7-11, 14-17 are now allowable.

#### ***Response to Arguments***

4. Applicant's arguments filed 11/9/04 have been fully considered but they are not persuasive. As to claims 1-5,12,18-19,21-22 Applicant argues that the prior art of record, Forecast, does not teach "enabling controlled access to the resources using logical boundary checks and security interpretations of those resources within the server". The Examiner disagrees. The cited claim language and its scope are very broad. The Examiner interprets this language to mean that a criterion is used in determining whether access is allowed based on these criteria. Forecast teaches these limitations to control access to server resources by determining whether server resources can meet the demand (logical boundary checks) and admitting access (security of resources) based on this determination. Since Forecast teaches using criteria to determine whether access can be allowed, Forecast meets the claimed limitations. These claim rejections are maintained.

#### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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6. Claims 24-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant claims electromagnetic signals containing computer program instructions on a computer network. In order for these claims to be statutory, the computer programs must be tangibly embodied on a computer readable medium (a product). Electromagnetic signal/energy is a nonstatutory natural phenomenon, not a product.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 1-5,12,18-19,21-22,24 are rejected under 35 U.S.C. 102(a) as being anticipated by Forecast et al (US 6,230,200).

As to claim 1,12,18,21:

Forecast teaches the claimed method/system/medium for creating and maintaining a plurality of virtual servers within a server comprising:

storing information of the storage media' (2/30-65); partitioning resources of the server and allocating sources to each server (2/30-65); and enabling controlled access to the resources using logical boundary checks and security interpretations of those resources within the server (access authorization check; 63/5-15); and sharing common resources among the servers. (21/25-30, 23/30)

As to claim 2:

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Forecast teaches allocating dedicated resources of the server to each instance of the virtual server (2/30-65); and sharing common resources of the server among all of the virtual servers (21/25-30, 23/30).

As to claim 3:

Forecast the dedicated resources are units of storage and network addresses of network interfaces of the server (2/18-65).

As to claim 4:

Forecast teaches the common resources are an operating system and a file system of the server (5/46-6/9).

As to claim 5:

Forecast teaches the server is a filer and wherein the virtual servers are virtual filers (file servers; 2/30-65).

As to claim 24:

Forecast teaches the claimed method/system/medium for creating and maintaining a plurality of virtual servers within a server. Forecast teaches allocating dedicated resources of the server to each instance of the virtual server (2/30-65); and sharing common resources of the server among all of the virtual servers (21/25-30, 23/30) storing information of the storage media (2/30-65); partitioning resources of the server and allocating sources to each server (2/30-65); and enabling controlled access to the resources using logical boundary checks and security interpretations of those resources within the server (access authorization check; 63/5-15); and sharing common resources among the servers. (21/25-30, 23/30)

*Allowable Subject Matter*

9. Claims 6-11, 13-17, 20, 23 are allowed for reasons indicated in the previous office action.
10. Claim 25 would be allowable if its rejection under 101 is overcome. Claim 25 has allowable subject matter of claim 6.

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

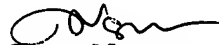
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Than Nguyen whose telephone number is 703-305-3866. The examiner can normally be reached on 8am-3pm M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on 308-1756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Than Nguyen  
Examiner  
Art Unit 2187

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20050201

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Than Nguyen  
Examiner  
Art Unit: 2187